

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

WILLIAM J. MESICH,)
Plaintiff,)
vs.) Case No. 03 CV 50410
OFFICER WOODY (Star #53 of the)
Belvidere Police), Personally; SERGEANT)
MARTIN (Star #37 of the Belvidere)
Police), Personally; OFFICER HOPKINS)
(of the Belvidere Police), Personally,)
Defendants.)

**RESPONSE AND BRIEF TO MOTION OF DEFENDANTS
TO STRIKE PLAINTIFF RESPONSES TO
DEFENDANT'S REQUEST TO ADMIT**

NOW COMES the Plaintiff, WILLIAM J. MESICH, by and through his standby counsel, Theodore Liebovich and for his Response and Brief to the Motion of the Defendants to Strike Plaintiff's Responses to Defendant's Request to Admit, states as follows:

- 1) The Plaintiff is a pro se party to this suit with the limited assistance of stand-by counsel.
- 2) That on October 18, 2004, the Defendant's served the Plaintiff with their first request to admit facts.
- 3) On December 30, 2004, the Plaintiff responded to the request to admit, admitting request 1 and 2 and denying request 3 through 10. A copy of the responses are attached to the Defendant's Motion to Strike.

4) Rule 36 of the Federal Rules of Civil Procedure states at subparagraph (a) "Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting an admission, a written answer or objection addressed to the matter, signed by the party or by the party's attorney."

5) The Court has the discretion to extend the time within which the Plaintiff has to file its Responses to the Request to Admit.

6) Federal Rule 36 (a) does not prevent the Court from granting an extension if there is no Motion filed for an extension within the original 30 days. Rule 36 (a) therefore allows the Court to grant an extension in its sound discretion at any time.

7) A Federal Court may permit a party to file Answers to a Request for Admission after expiration of a 30 day deadline where the delay was not caused by any lack of good faith and where an untimely response will not unduly prejudice the requesting party. In re Schwinn Bicycle Company 190BR599 (Bankruptcy N.D.ILL.1995).

8) Requested admissions which do not receive timely responses may be deemed admitted on Motion to the Court, but the Court in its discretion may permit filing of an answer that would otherwise be untimely. The tests for allowing withdrawal of admissions is dependant upon prejudice to the requesting party and any disservice to the presentation of truth at trial if the requests are deemed admitted and the same criteria are applicable in determining allowability of late responses to request for admissions so that the Court should normally permit untimely answers when doing so would aid in the presentation of the merits

and would not prejudice the requesting party. American Petro, Inc., vs. Shurtleff 159 F.R.D.35 (D.MINN. 1994).

9) The District Court enjoys the discretion to permit a party to file a response to request for admissions after expiration of the time period for response when such filing will facilitate proper presentation of merits and when an untimely response will not prejudice the requesting party in maintaining an action, essentially, the District Court must strike a balance between diligence in litigation and the interest of justice." U.S. vs. \$30,354.00 in U.S. Currency, 853 F.SUPP.442 (W.D.KY. 1994).

Respectfully submitted,

WILLIAM J. MESICH, Plaintiff,

BY: 
THEODORE LIEBOVICH, Standby Counsel

Prepared by:

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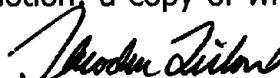
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NOTICE OF FILING

TO: Attorney Basileios J. Foutris
KNIGHT, HOPPE, KURNIK & KNIGHT, L.L.C.
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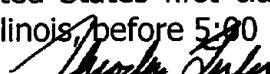
PLEASE TAKE NOTICE that on the 4th day of March, 2005, the undersigned caused to be filed with the United States District Court, Western Division, of Winnebago County, 404 Elm Street, Rockford, Illinois, 61111, a Response and Brief to Motion; a copy of which is attached hereto and herewith served upon you.



THEODORE LIEBOVICH

PROOF OF SERVICE

I, THEODORE LIEBOVICH, the attorney, certify that on March 4 2005, I caused the aforesaid Notice of Filing and Response and Brief to Motion to be served upon all persons to whom it is directed via fax, personal delivery, or by United States first class mail, postage prepaid, by depositing same in the U.S. Mail at Rockford, Illinois, before 5:00 p.m.



THEODORE LIEBOVICH

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